UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,526	02/21/2002	Henry L. Sterchi	723-1259	3040

27562 7590 09/28/2009

NIXON & VANDERHYE, P.C.
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203

EXAMINER	
PAPPAS, PETER	
ART UNIT	PAPER NUMBER
2628	
MAIL DATE	DELIVERY MODE
09/28/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HENRY L. STERCHI, JEFF KALLES, MIYAMOTO SHIGERU, DENIS DYACK, and CAREY MURRAY

Appeal 2009-003333
Application 10/078,526[1]
Technology Center 2600

Decided: September 28, 2009

Before ROBERT E. NAPPI, MARC S. HOFF, and THOMAS S. HAHN, *Administrative Patent Judges*.

HOFF, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from a Final Rejection of claims 1-16. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

Appellants' invention relates to techniques for automatically controlling animation within a video game or other graphical presentation (Spec. 1). Objects within a three-dimensional virtual world have tags

---

[1] The real party in interest is Nintendo of America Inc.

associated therewith. The tags define the reaction of a character in the three-dimensional virtual world when that character approaches within a defined proximity of the object having the tag (Spec. 4). In one embodiment, the tagging system is priority based, and the character will pay attention to the tagged object that is of highest interest to the character (Spec. 5).

Claim 1 is exemplary of the claims on appeal:

1. A method of animating a user-controlled character in a virtual three-dimensional environment of a dynamic three-dimensional game space, comprising:

rendering the three-dimensional environment of the three-dimensional game space in which the user-controlled character will be animated;

defining a tag at a location in the three-dimensional virtual environment that is external to the user-controlled character, and assigning tag information to the tag that designates a type of reaction for an object associated with the tag when the user-controlled character comes in proximity to the tag;

animating the user-controlled character using a scripted animation sequence in response to user inputs;

detecting when the user-controlled character is within a predetermined proximity to the tag; and,

when the user-controlled character is within a predetermined proximity to the tag, using the location of the tag and the tag information to dynamically modify the user-controlled character's animation and the animation of the object in the three-dimensional virtual environment associated with the tag in real time;

wherein the tag is defined at the location such that the tag is at least initially not apparent to the user.

The Examiner relies upon the following prior art in rejecting the claims on appeal:

Ventrella	US 6,545,682	Apr. 8, 2003
Bickmore	US 2003/0206170 A1	Nov. 6, 2003

Claims 1-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ventrella in view of Bickmore.

Throughout this decision, we make reference to the Appeal Brief ("App. Br.," filed Aug. 20, 2007), the Reply Brief ("Reply Br.," filed Jan. 22, 2008) and the Examiner's Answer ("Ans.," mailed Nov. 21, 2007) for their respective details.

ISSUE

Appellants argue that neither Ventrella nor Bickmore teaches or suggests using the location of the tag and the tag information to dynamically modify the user-controlled character's animation and the animation of the object in the three-dimensional virtual environment associated with the tag in real time (App. Br. 15), in that Ventrella's "stimulus" does not equate to the claimed tag. In Ventrella, the reaction of the character to the stimulus is controlled by the "genes" of the avatar, rather than by information associated with an object's tag (App. Br. 15). Appellants further argue that Ventrella does not teach using the tag information to animate the object associated with the tag (App. Br. 16).

Appellants' contentions present us with the following issue:

Have Appellants shown that the Examiner erred in finding that the combination of Ventrella and Bickmore teaches or suggests using the location of the tag and the tag information to dynamically modify the user-controlled character's animation and the animation of the object in the three-

dimensional virtual environment associated with the tag in real time, or dynamically generating an animation sequence for the object corresponding to the reaction code in the tag information, as the claims require?

FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

The Invention

1. According to Appellants, the invention concerns techniques for automatically controlling animation within a video game or other graphical presentation (Spec. 1). Objects within a three-dimensional virtual world have tags associated therewith. The tags define the reaction of a character in the three-dimensional virtual world when that character approaches within a defined proximity of the object having the tag (Spec. 4). In one embodiment, the tagging system is priority based, and the character will pay attention to the tagged object that is of highest interest to the character (Spec. 5).

Ventrella

2. Ventrella teaches method and apparatus for creating an avatar. A number of user-modifiable genes represent different user-perceivable attributes of the avatar. One or more of the genes may be associated with a personality trait of the avatar, such as alertness, shiftiness, curiosity, or tendency to daydream (Abstract).

3. Ventrella teaches that the speed at which the head of the avatar rotates toward a point of interest in the virtual environment is governed by the avatar's "alertness gene" (col. 18, ll. 13-21).

4. The avatar's "curiosity gene" governs its tendency to look toward an object or event when nothing important is happening in the avatar's immediate vicinity (col. 19, ll. 21-23).

Bickmore

5. Bickmore teaches the use of autonomous animated computer characters (avatars) for facilitating communication about a document between two users. The avatar is animated to perform specified behaviors including pointing, walking and changing facial expressions (Abstract).

PRINCIPLES OF LAW

On the issue of obviousness, the Supreme Court has stated that "the obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion, and motivation." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 419 (2007). Further, the Court stated "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* at 416. "One of the ways in which a patent's subject matter can be proved obvious is by noting that there existed at the time of the invention a known problem for which there was an obvious solution encompassed by the patent's claims." *Id.* at 419-20.

ANALYSIS

Independent claims 1, 7, and 12 each recite that tags are defined at defined locations, are associated with objects, and designate a reaction to be made by a user-controlled character *and by the associated object* (emphasis added). Each of independent claims 1, 7, and 12 further recite dynamically generating animation for the user-controlled character *and the associated object* in the three-dimensional virtual environment (emphasis added).

The Examiner finds that Ventrella teaches the subject matter of claim 1, save for explicitly assigning tag information to a tag (Ans. 4). According to the Examiner, it would have been obvious to combine Bickmore with Ventrella to achieve the instant invention, because having a priority value directly assigned to a given stimulus would allow for a more realistic interaction between stimuli and an avatar (Ans. 6).

We disagree with the Examiner's finding that the combination of Ventrella and Bickmore teaches every element of claim 1. Appellants argue that Ventrella does not teach using a tag to animate the object associated with the tag (App. Br. 16), and that Bickmore does not make up for this deficiency of Ventrella, because Bickmore does not teach or suggest modifying the tagged object (App. Br. 17). Appellants further argue that the combination of Ventrella and Bickmore does not teach dynamic modification of the animation of the object in the three-dimensional virtual environment when the user-controlled character is within a predetermined proximity to the tag (App. Br. 18).

We are persuaded by Appellants' arguments. The Examiner's Statement Of Rejection (Ans. 3-9) fails to explain where the use of a tag to animate the object associated with the tag, or to dynamically modify the animation of the object when the user-controlled character is nearby, may be found in either Ventrella or Bickmore. Similarly, the Examiner's Response to Argument section (Ans. 10-13) fails to address Appellants' argument and explain how the references may be understood to teach these limitations. The Examiner admits that in the case of an example where "according to Ventrella, an avatar might stare at a bird or turn its head to follow the flight of the bird," Ventrella does not explicitly disclose that said bird flies away in

response to said head turning (Ans. 11). The Examiner's subsequent finding that, nonetheless, the combination of Ventrella and Bickmore

> is considered to result in a system which would allow for said bird to in fact have values (tag information) associated with it so that when said avatar turns to stare at said bird in flight that said bird might adjust its flight depending on the type of tag information associated with said bird

(Ans. 12) is wholly unsupported by evidence. Ventrella teaches only that the speed at which the head of the avatar rotates toward a point of interest in the virtual environment is governed by the avatar's "alertness gene" (FF 3), and that the avatar's "curiosity gene" governs its tendency to look toward an object or event when nothing important is happening in the avatar's immediate vicinity (FF 4). We have reviewed Ventrella and Bickmore, and find that neither reference teaches or suggests assigning tag information that designates a type of reaction for an object associated with the tag, nor dynamically modifying the animation of the object in the three-dimensional virtual environment, when a user-controlled character approaches within a predetermined proximity.

Therefore, Appellants have demonstrated error in the Examiner's rejection of independent claims 1, 7, and 12. As a result, we will not sustain the rejection of claims 1-16 under 35 U.S.C. § 103(a) as being unpatentable over Ventrella in view of Bickmore.

CONCLUSION OF LAW

Appellants have shown that the Examiner erred in finding that the combination of Ventrella and Bickmore teaches or suggests using the location of the tag and the tag information to dynamically modify the user-controlled character's animation and the animation of an object in the three-

dimensional virtual environment associated with the tag in real time, or dynamically generating an animation sequence for the object corresponding to the reaction code in the tag information, as the claims require.

ORDER

The Examiner's rejection of claims 1-16 is reversed.

REVERSED

ke

NIXON & VANDERHYE, P.C.
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203